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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

SIDNEY NAIMAN, individually and ) Case No.  
 on behalf of all others similarly situated,)

Plaintiff,

vs.

RAYOSUN, LLC., FREEDOM )  
 SOLAR SERVICES, LLC, FREEDOM )  
 FOREVER, LLC and DOES 1 through )  
 10, inclusive, and each of them, )  
 Defendant. )

**CLASS ACTION**

**COMPLAINT FOR VIOLATIONS  
 OF:**

1. NEGLIGENT VIOLATIONS  
 OF THE TELEPHONE  
 CONSUMER PROTECTION  
 ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS  
 OF THE TELEPHONE  
 CONSUMER PROTECTION  
 ACT [47 U.S.C. §227(b)]
3. NEGLIGENT VIOLATIONS  
 OF THE TELEPHONE  
 CONSUMER PROTECTION  
 ACT [47 U.S.C. §227(c)]
4. WILLFUL VIOLATIONS  
 OF THE TELEPHONE  
 CONSUMER PROTECTION  
 ACT [47 U.S.C. §227(c)]

**DEMAND FOR JURY TRIAL**

1 Plaintiff SIDNEY NAIMAN (“Plaintiff”), individually and on behalf of all  
2 others similarly situated, alleges the following upon information and belief based  
3 upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others  
6 similarly situated seeking damages and any other available legal or equitable  
7 remedies resulting from the illegal actions of RAYOSUN, LLC, FREEDOM  
8 SOLAR SERVICES, LLC, FREEDOM FOREVER, LLC. (“Defendant”), in  
9 negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular  
10 telephone in violation of the Telephone Consumer Protection Act, 47 *U.S.C.* § 227  
11 *et seq.* (“TCPA”) and related regulations, specifically the National Do-Not-Call  
12 provisions, thereby invading Plaintiff’s privacy.

13 **JURISDICTION & VENUE**

14 2. Jurisdiction is proper under 28 *U.S.C.* § 1332(d)(2) because Plaintiff,  
15 a resident of California, seeks relief on behalf of a Class, which will result in at  
16 least one class member belonging to a different state than that of Defendant, a  
17 California company. Plaintiff also seeks up to \$1,500.00 in damages for each call  
18 in violation of the TCPA, which, when aggregated among a proposed class in the  
19 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.  
20 Therefore, both diversity jurisdiction and the damages threshold under the Class  
21 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

22 3. Venue is proper in the United States District Court for the Northern  
23 District of California pursuant to 28 *U.S.C.* § 1391(b) and because Defendant does  
24 business within the State of California and Plaintiff resides within the County of  
25 Contra Costa.

26 **PARTIES**

27 4. Plaintiff, SIDNEY NAIMAN (“Plaintiff”), is a natural person residing  
28 in Contra Costa County, California and is a “person” as defined by 47 *U.S.C.* § 153

1 (39).

2 5. Defendant, RAYOSUN, LLC, FREEDOM SOLAR SERVICES,  
3 LLC, FREEDOM FOREVER, LLC. (“Defendant”) is a solar energy company, and  
4 is a “person” as defined by 47 U.S.C. § 153 (39).

5 6. The above named Defendant, and its subsidiaries and agents, are  
6 collectively referred to as “Defendants.” The true names and capacities of the  
7 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are  
8 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious  
9 names. Each of the Defendants designated herein as a DOE is legally responsible  
10 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
11 Complaint to reflect the true names and capacities of the DOE Defendants when  
12 such identities become known.

13 7. Plaintiff is informed and believes that at all relevant times, each and  
14 every Defendant was acting as an agent and/or employee of each of the other  
15 Defendants and was acting within the course and scope of said agency and/or  
16 employment with the full knowledge and consent of each of the other Defendants.  
17 Plaintiff is informed and believes that each of the acts and/or omissions complained  
18 of herein was made known to, and ratified by, each of the other Defendants.

19 **FACTUAL ALLEGATIONS**

20 8. Beginning in or around October 12, 2017, Defendant contacted  
21 Plaintiff on Plaintiff’s cellular telephone number ending in -6443, in an attempt to  
22 solicit Plaintiff to purchase Defendant’s services.

23 9. Defendant used an “automatic telephone dialing system” as defined  
24 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

25 10. Defendant contacted or attempted to contact Plaintiff from telephone  
26 numbers belonging to Defendant, including without limitation (925) 304-1015 and  
27 (951) 639-6116, and (818) 818-9869 Defendant’s calls constituted calls that were  
28 not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

1        11. Defendant's calls were placed to telephone number assigned to a  
2 cellular telephone service for which Plaintiff incurs a charge for incoming calls  
3 pursuant to 47 U.S.C. § 227(b)(1).

4        12. During all relevant times, Defendant did not possess Plaintiff's "prior  
5 express consent" to receive calls using an automatic telephone dialing system or an  
6 artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §  
7 227(b)(1)(A).

8        13. Further, Plaintiff's cellular telephone number ending in -6443 was  
9 added to the National Do-Not-Call Registry on or about April 11, 2004, well over  
10 thirty (30) days prior to Defendant's initial call to Plaintiff.

11        14. Plaintiff requested numerous times that Defendant put his cellular  
12 number ending in -6443 on Defendant's internal Do-Not-Call list. Despite such  
13 requests, Defendant continued to call Plaintiff's cellular telephone.

14        15. Defendant placed multiple calls soliciting its business to Plaintiff on  
15 his cellular telephone beginning on or about October of 2017.

16        16. Such calls constitute solicitation calls pursuant to 47 C.F.R. §  
17 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

18        17. Plaintiff received numerous solicitation calls from Defendant within a  
19 12-month period.

20        18. Defendant continued to call Plaintiff in an attempt to solicit its  
21 services and in violation of the National Do-Not-Call provisions of the TCPA.

22        19. Upon information and belief, and based on Plaintiff's experiences of  
23 being called by Defendant after being on the National Do-Not-Call list for several  
24 years prior to Defendant's initial call, and at all relevant times, Defendant failed to  
25 establish and implement reasonable practices and procedures to effectively prevent  
26 telephone solicitations in violation of the regulations prescribed under 47 U.S.C. §  
27 227(c)(5).

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**CLASS ALLEGATIONS**

20. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the three proposed classes (hereafter, jointly, “The Classes”).

21. The class concerning the ATDS claim for no prior express consent (hereafter “The ATDS Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

22. The class concerning the ATDS claim for revocation of consent, to the extent prior consent existed (hereafter “The ATDS Revocation Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had revoked any prior consent to receive such calls prior to the calls within the four years prior to the filing of this Complaint

23. The class concerning the National Do-Not-Call violation (hereafter “The DNC Class”) is defined as follows:

All persons within the United States registered on the National Do-Not-Call Registry for at least 30 days, who had not granted Defendant prior express consent nor had a prior established business relationship, who received

1 more than one call made by or on behalf of Defendant  
2 that promoted Defendant's products or services, within  
3 any twelve-month period, within four years prior to the  
4 filing of the complaint.

5 24. Plaintiff represents, and is a member of, The ATDS Class, consisting  
6 of all persons within the United States who received any solicitation telephone calls  
7 from Defendant to said person's cellular telephone made through the use of any  
8 automatic telephone dialing system or an artificial or prerecorded voice and such  
9 person had not previously not provided their cellular telephone number to  
10 Defendant within the four years prior to the filing of this Complaint.

11 25. Plaintiff represents, and is a member of, The ATDS Revocation Class,  
12 consisting of all persons within the United States who received any  
13 solicitation/telemarketing calls from Defendant to paid person's cellular telephone  
14 made through the use of any automatic telephone dialing system or an artificial or  
15 prerecorded voice and such person had revoked any prior express consent to receive  
16 such calls prior to the calls within the four years prior to the filing of this Complaint.

17 26. Plaintiff represents, and is a member of, The DNC Class, consisting  
18 of all persons within the United States registered on the National Do-Not-Call  
19 Registry for at least 30 days, who had not granted Defendant prior express consent  
20 nor had a prior established business relationship, who received more than one call  
21 made by or on behalf of Defendant that promoted Defendant's products or services,  
22 within any twelve-month period, within four years prior to the filing of the  
23 complaint.

24 27. Defendant, its employees and agents are excluded from The Classes.  
25 Plaintiff does not know the number of members in The Classes, but believes the  
26 Classes members number in the thousands, if not more. Thus, this matter should  
27 be certified as a Class Action to assist in the expeditious litigation of the matter.

28 28. The Classes are so numerous that the individual joinder of all of its

1 members is impractical. While the exact number and identities of The Classes  
2 members are unknown to Plaintiff at this time and can only be ascertained through  
3 appropriate discovery, Plaintiff is informed and believes and thereon alleges that  
4 The Classes includes thousands of members. Plaintiff alleges that The Classes  
5 members may be ascertained by the records maintained by Defendant.

6 29. Plaintiff and members of The ATDS Class were harmed by the acts of  
7 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
8 and ATDS Class members via their cellular telephones thereby causing Plaintiff  
9 and ATDS Class and ATDS Revocation Class members to incur certain charges or  
10 reduced telephone time for which Plaintiff and ATDS Class and ATDS Revocation  
11 Class members had previously paid by having to retrieve or administer messages  
12 left by Defendant during those illegal calls, and invading the privacy of said  
13 Plaintiff and ATDS Class and ATDS Revocation Class members.

14 30. Common questions of fact and law exist as to all members of The  
15 ATDS Class which predominate over any questions affecting only individual  
16 members of The ATDS Class. These common legal and factual questions, which  
17 do not vary between ATDS Class members, and which may be determined without  
18 reference to the individual circumstances of any ATDS Class members, include,  
19 but are not limited to, the following:

- 20 a. Whether, within the four years prior to the filing of this  
21 Complaint, Defendant made any telemarketing/solicitation call  
22 (other than a call made for emergency purposes or made with  
23 the prior express consent of the called party) to a ATDS Class  
24 member using any automatic telephone dialing system or any  
25 artificial or prerecorded voice to any telephone number  
26 assigned to a cellular telephone service;
- 27 b. Whether Plaintiff and the ATDS Class members were damaged  
28 thereby, and the extent of damages for such violation; and



1 c. Whether Defendant should be enjoined from engaging in such  
2 conduct in the future.

3 31. As a person that received numerous telemarketing/solicitation calls  
4 from Defendant using an automatic telephone dialing system or an artificial or  
5 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting  
6 claims that are typical of The ATDS Class.

7 32. Common questions of fact and law exist as to all members of The  
8 ATDS Revocation Class which predominate over any questions affecting only  
9 individual members of The ATDS Revocation Class. These common legal and  
10 factual questions, which do not vary between ATDS Revocation Class members,  
11 and which may be determined without reference to the individual circumstances of  
12 any ATDS Revocation Class members, include, but are not limited to, the  
13 following:

14 a. Whether, within the four years prior to the filing of this  
15 Complaint, Defendant made any telemarketing/solicitation call  
16 (other than a call made for emergency purposes or made with  
17 the prior express consent of the called party) to an ATDS  
18 Revocation Class member, who had revoked any prior express  
19 consent to be called using an ATDS, using any automatic  
20 telephone dialing system or any artificial or prerecorded voice  
21 to any telephone number assigned to a cellular telephone  
22 service;

23 b. Whether Plaintiff and the ATDS Revocation Class members  
24 were damaged thereby, and the extent of damages for such  
25 violation; and

26 c. Whether Defendant and their agents should be enjoined from  
27 engaging in such conduct in the future.

28 33. As a person that received numerous telemarketing/solicitation calls



1 from Defendant using an automatic telephone dialing system or an artificial or  
2 prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff  
3 is asserting claims that are typical of The ATDS Revocation Class.

4 34. Plaintiff and members of The DNC Class were harmed by the acts of  
5 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
6 and DNC Class members via their telephones for solicitation purposes, thereby  
7 invading the privacy of said Plaintiff and the DNC Class members whose telephone  
8 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class  
9 members were damaged thereby.

10 35. Common questions of fact and law exist as to all members of The  
11 DNC Class which predominate over any questions affecting only individual  
12 members of The DNC Class. These common legal and factual questions, which do  
13 not vary between DNC Class members, and which may be determined without  
14 reference to the individual circumstances of any DNC Class members, include, but  
15 are not limited to, the following:

- 16 a. Whether, within the four years prior to the filing of this  
17 Complaint, Defendant or its agents placed more than one  
18 solicitation call to the members of the DNC Class whose  
19 telephone numbers were on the National Do-Not-Call Registry  
20 and who had not granted prior express consent to Defendant and  
21 did not have an established business relationship with  
22 Defendant;
- 23 b. Whether Defendant obtained prior express written consent to  
24 place solicitation calls to Plaintiff or the DNC Class members'  
25 telephones;
- 26 c. Whether Plaintiff and the DNC Class member were damaged  
27 thereby, and the extent of damages for such violation; and
- 28 d. Whether Defendant and its agents should be enjoined from

engaging in such conduct in the future.

36. As a person that received numerous solicitation calls from Defendant within a 12-month period, who had not granted Defendant prior express consent and did not have an established business relationship with Defendant, Plaintiff is asserting claims that are typical of the DNC Class.

37. Plaintiff will fairly and adequately protect the interests of the members of The Classes. Plaintiff has retained attorneys experienced in the prosecution of class actions.

38. A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Classes members is impracticable. Even if every Classes member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Classes member.

39. The prosecution of separate actions by individual Classes members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Classes members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

40. Defendant has acted or refused to act in respects generally applicable to The Classes, thereby making appropriate final and injunctive relief with regard to the members of the Classes as a whole.

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**FIRST CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(b).**

**On Behalf of the ATDS Class and ATDS Revocation Class**

41. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-42.

42. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

43. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

44. Plaintiff and the ATDS Class and the ATDS Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(b)**

**On Behalf of the ATDS Class and the ATDS Revocation Class**

45. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-42.

46. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

47. As a result of Defendant's knowing and/or willful violations of *47*

*U.S.C. § 227(b)*, Plaintiff and the ATDS Class and the ATDS Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

48. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

### **THIRD CAUSE OF ACTION**

#### **Negligent Violations of the Telephone Consumer Protection Act**

#### **47 U.S.C. §227(c)**

#### **On Behalf of the DNC Class**

49. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-42.

50. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular *47 U.S.C. § 227 (c)(5)*.

51. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*, Plaintiff and the DNC Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

52. Plaintiff and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

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**FOURTH CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227 et seq.**

**On Behalf of the DNC Class**

53. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-42.

54. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227(c), in particular 47 U.S.C. § 227 (c)(5).

55. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(c), Plaintiff and the DNC Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).

56. Plaintiff and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

**FIRST CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(b)**

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and ATDS Revocation members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(b)**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and the ATDS Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

**THIRD CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(c)**

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).
- Any and all other relief that the Court deems just and proper.

**FOURTH CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(c)**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

**JURY TRIAL**

57. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 14th Day of January, 2019.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman

Todd M. Friedman

Law Offices of Todd M. Friedman

Attorney for Plaintiff